IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 7254 of 2007(L)

PETITIONER:

SANGEETHA VARMA, SREEVALSOM,
KALAVAKULAM, PALAKKAD, WORKING AS LECTURER,
N.S.S.COLLEGE, OTTAPALAM.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:

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1. DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN.

2. DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, PALACE ROAD, THRISSUR.

3. SECRETARY, NSS COLLEGE,
CENTRAL COMMITTEE, CHEGANACHERRY-2.

4. PRINCIPAL, NSS COLLEGE,
OTTAPALAM.

BY GOVERNMENT PLEADER SRI. A.J. VARGHESE
SRI. P.G. PARAMESWARA PANICKER (SR.), SC FOR R3 & R4
ADV. SRI.P.GOPAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 7254/07

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE APPOINTMENT ORDER DT. 15.6.05

EXT.P2. COPY OF THE OR APPROVING APPOINTMENT OF THE PETITIONER DT. 26.12.05

EXT.P3. COPY OF THE JUDGMENT IN WP(C) NO.34329/02 DT. 101.03

RESPONDENT'S EXHIBITS:

EXT.R2(a). COPY OF THE G.O.(MS) NO.95/06/H.Edn. dt. 10.8.06

EXT.R3(a). COPY OF THE SELECT LIST DT. 6.10.04

EXT.R3(b). COPY OF THE WORKLOAD STATEMENT ISSUED BY THE ADDITIONAL DIRECTOR OF COLLEGIATE EDUCATION

EXT.R3(c). COPY OF THE STATEMENT SHOWING THE WORKLOAD FOR THE ACADEMIC YEAR 2004-05 BASED ON THE STUDENTS STRENGTH AS ON 1.11.03 FOR THE SUBJECT ENGLISH IN THE N.S.S. COLLEGE, OTTAPPALAM

EXT.R3(d). COPY OF THE STATEMENT SHOWING THE WORKLOAD FOR THE ACADEMIC YEAR 2005-06 BASED ON THE STUDENTS STRENGTH AS ON 1.11.04 FOR THE SUBJECT ENGLISH IN THE N.S.S. COLLEGE, OTTAPPALAM

EXT.R3(e). COPY OF THE STATEMENT SHOWING THE WORKLOAD FOR THE ACADEMIC YEAR 2006-07 BASED ON THE STUDENTS STRENGTH AS ON 1.11.05 FOR THE SUBJECT ENGLISH IN THE N.S.S. COLLEGE, OTTAPPALAM

EXT.R3(f). COPY OF THE JUDGMENT DT. 17.1.07 IN WPC 12109/06

EXT.R3(g). COPY OF THE JUDGMENT DT. 13.2.07 IN WPC NO. 15714/06

EXT.R3(h). COPY OF THE JUDGMENT DT. 2.4.07 IN WPC NO.6459/07 OF THIS HON'BLE COURT

EXT.R3(i). COPY OF THE WORKLOAD STATEMENT ISSUED BY THE DIRECTOR OF COLLEGIATE EDUCATION

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO. 7254 OF 2007

Dated this the 30th day of July, 2007

J U D G M E N T

Petitioner claims that she was appointed as Lecturer in English with effect from June 15, 2005 against a retirement vacancy in N.S.S. College, Ottapalam, under the management of respondent No.3. She joined duty on June 20, 2005 and her appointment was approved by the University on December 26, 2005. Grievance of the petitioner is that she has not been paid salary so far, though the Government is bound to pay the same under the Direct Payment Agreement.

2. In the counter affidavit filed by respondent No.3, the management has contended that appointment of petitioner in the Department of English in N.S.S. College, Ottappalam, was made against the resignation vacancy of Smt. Smitha K., who was placed at rank no.1 under open merit category in Ext.R3(a) select list. Smt. Smitha K. was appointed in N.S.S. College, Ottapalam, by the manager with effect from October 16, 2004 in the retirement vacancy of Sri. Govindankutty Kartha, who retired from service on March 30,

2002. It is contended by the management that appointment of petitioner was perfectly in order. A perusal of the additional counter affidavit of respondent No.3 undoubtedly shows that the contention raised by respondent No.2 cannot be prima facie sustained. Anyhow I hasten to add that it is for the Directorate to look into all these matters in consultation with the University. If the Directorate is of the view that the appointment of the petitioner was irregular, as contended by the management, appropriate action can be taken.

3. In the counter affidavit it is contended by respondent No.2 that appointment of petitioner was against the rules since there was excess staff in the colleges under the N.S.S. Corporate management consequent on the delinking of Pre-degree in colleges. The counter affidavit is totally vague and evasive to say the least.

4. Anyhow, I do not propose to go into the above issue any further in view of the dictum laid down by a Division Bench of this Court recently in W.A. 940/07 in **State of Kerala v. Dr. Sina and Others [2007 (3) ILR Kerala 122]**. The Division Bench held that the Director of collegiate Education or the officers of the Directorate were obliged to make payment of salary if the University had granted approval to the appointment. Obviously, the University must have

considered the staff pattern, workload etc., while granting approval. Even if the Directorate feels that it was done otherwise, it will be always open to the directorate to revert back to the University. Statue 14(3) empowers the controlling officers to ensure that no fresh appointment is made against any vacancy until all the supernumeraries are absorbed. The only contention raised by respondent No.2 appears to be that there are excess staff in the colleges under the management. If respondent No.2 holds such a view, necessarily he is bound to address the University requesting for scrutiny and verification of the records in which event an appropriate decision in the matter can be taken.

5. In that view of the matter, I find no justification in refusing to pay salary and allowances to the petitioner on the specious plea that the appointment is not liable to be approved and that she is not entitled to get salary since there are excess staff in the college under the management. Such an indifferent attitude cannot be countenanced from a statutory authority.

Therefore the writ petition is disposed of with a direction to respondent No.2 to raise its objection, if any, as regards the approval of appointment of the petitioner before the University of Calicut,

within one month from the date of receipt of a copy of this judgment. The University shall take a decision in the matter within one month from the date of receipt of such request from respondent No.2. At any rate, it shall be ensured by respondent No.2 that the entire process of scrutiny / verification is completed and salary and allowances are paid to the petitioner, within two months from the date of receipt of a copy of this judgment. Petitioner shall produce a certified copy of the judgment along with a copy of the writ petition before respondent No.2 for compliance.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007